

REMARKS

Claims 1-35 are pending in this application, with claims 1, 13, and 21 being the independent claims. Claims 1 and 21 have been amended. No new matter has been added and no new issues are raised by this response.

In the Final Rejection dated October 14, 2008, claims 1-35 were rejected under 35 U.S.C. §103(a) and claims 1-32 were provisionally rejected on the grounds of non-statutory obviousness-type double patenting. A complete response to the Final Rejection was filed on December 9, 2008. An Advisory Action was issued on December 18, 2008 indicating that the response to the Final Rejection raises new issues that would require further consideration. Applicants respectfully traverse the outstanding rejections to the claims.

Double Patenting Rejection

In the Final Rejection, claims 1-32 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 21-40 of U.S. Patent Application No. 11/468,613 (the “‘613” application). Applicants note that the double patenting rejection is provisional, and respectfully defer response until a notice of allowance is received on one of these applications.

Rejections under 35 U.S.C. §103

In the Final Rejection, claims 1, 2, 4, 5-7, 9-11, 21, 22, 24, 25-27, and 29-31 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 6,370,584 issued to Bestavros *et al.* (hereinafter referred to as “Bestavros”) in view of U.S. Patent No. 6,466,978 issued to Mukherjee *et al.* (hereinafter referred to as “Mukherjee”). Applicants respectfully traverse this rejection.

Independent claim 1 recites “detecting the addition of new content on a first server in the plurality of servers; updating a first state table on the first server with information about the new content; communicating the information about the new content to each server in the plurality of servers; updating state tables of each of the other servers in the plurality of servers with the information about the new content”. While the Final Rejection fails to address each of these elements specifically, the Final Rejection asserts that “Mukherjee

discloses another server clustering system which discloses loading data files to a client to create a new file manager (which would inherently include the updating of internal state tables), and the new file manager will notify other clients 408 that use the affected files of the change in file manager status (which would inherently include the updating of the client's state tables) (Figure 9C; col. 15, line 49 to col. 16, line 14).” Final Rejection, pages 4-5. Applicants proceed on the assumption that Final Rejection intends to assert that the cited section of Mukherjee discloses these elements. Applicants respectfully disagree.

The cited section of Mukherjee describes an embodiment Mukherjee’s expansion and contraction process. Mukherjee states “Within a cluster 401, the number of file managers 406 changes dynamically in response to the **bandwidth usage** for file operations related to the files residing on the cluster disk 402. Thus the size of a cluster 401 expands or contracts on the basis of the **load**.” Mukherjee, column 14, lines 55-59. As asserted in the Final Rejection, in Mukherjee’s system a new file manager may be selected by a cluster manager from among non-file manager clients when additional bandwidth is needed, and the new file manager may notify clients of the change in its file manager status. However, this change in status and the resulting notification is entirely driven by the selection of an additional file manager based on the bandwidth loads of current and potential file managers. No detection of new content and no communication between servers about new content is disclosed or suggested. As one skilled in the art will readily appreciate, bandwidth utilization (load) of a server and the content on a server are not the same. Nowhere in this section of Mukherjee is “detecting the **addition of new content** on a first server in the plurality of servers; updating a first state table on the first server with information about the new **content**; communicating the information about the new **content** to each server in the plurality of servers; updating state tables of each of the other servers in the plurality of servers with the information about the new **content**” disclosed or suggested.

As admitted in the Final Rejection, Bestavros fails to disclose or suggest these elements. Therefore, the Examiner has not shown that Bestavros and Mukherjee, taken individually or together, disclose or suggest the subject matter of claim 1. Accordingly. Applicants respectfully request reconsideration and withdrawal of the rejection of claim 1 under 35 U.S.C. §103(a).

Independent claim 21 is rejected on the same grounds as claim 1. Therefore, Applicants submit the arguments set forth in regard to claim 1 also apply to claim 21. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 21 under 35 U.S.C. §103(a).

In the Final Rejection, claims 12-19 and 32-35 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Bestavros in view of “Load Balancing a Cluster of Webservers Using Distributed Packet Rewriting” by Aversa *et al.* (hereinafter referred to as “Aversa”). Applicants respectfully traverse this rejection.

Independent claim 13 recites “the addition of an asset to the server computer initiates a change to the state table of the server computer and a transmission of information about the change to each of the other servers in said plurality of server computers.” The Final Rejection asserts that Aversa, section 3.2 discloses this element. Applicants respectfully disagree. As stated in the Final Rejection, “Aversa discloses another server network which discloses pushing changes to the state table (i.e. **periodically** broadcasting the server load information to the other servers and updating the particular loads of other servers) (section 3.2 state sharing functionality).” Final Rejection, page 9. Aversa clearly disclosed “broadcasting the local server’s own load periodically” Aversa, section 3.3. As one skilled in the art will appreciate, periodic broadcasting of state is not the same as a transmission initiated as the result of the addition of an asset to a server. Moreover, as one skilled in the art will appreciate, a server’s load is not the same as an asset stored on a server. Aversa discloses periodic broadcasts of load only, regardless of the state of Aversa’s servers or any action performed by them or changes to them. Therefore, Aversa does not disclose or suggest “the addition of an **asset** to the server computer **initiates** a change to the state table of the server computer and a transmission of information about the change to each of the other servers in said plurality of server computers.”

As admitted in the Final Rejection, Bestavros fails to disclose or suggest this element. Therefore, the Examiner has not shown that Bestavros and Aversa, taken individually or together, disclose or suggest the subject matter of claim 13. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 13 under 35 U.S.C. §103(a).

Claim 12 recites “identifying as available servers any servers whose load factors are below threshold limits; determining if there are any available servers; and upon determining that there are no available servers, selecting a server having a lowest load factor from the other servers having the content.” The Final Rejection asserts that Aversa disclose this element. Applicants respectfully disagree. As stated in the Final Rejection, Aversa discloses selecting a server from among a group of servers whose load factors are below a defined threshold. However, this is not the same “identifying as available servers any servers whose load factors are below threshold limits; determining if there are any available servers; and **upon determining that there are no available servers**, selecting a server having a lowest load factor from the other servers having the content.” The cited section of Aversa does not disclose or suggest any means or methods of selecting a server when all servers are exceeding a defined threshold. Therefore, Aversa does not disclose or suggest the subject matter of claim 12.

As admitted in the Final Rejection, Bestavros fails to disclose or suggest this element. Therefore, the Examiner has not shown that Bestavros and Aversa, taken individually or together, disclose or suggest the subject matter of claim 12. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 12 under 35 U.S.C. §103(a).

Claims 8 and 28 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Bestavros in view of U.S. Patent No. 6,070,191 issued to Narendran *et al.* (hereinafter referred to as “Narendran”). Applicants respectfully traverse this rejection.

Claim 8 and 28 recite “said parametric information comprises whether each asset represented in the parametric information is a new release.” The Final Rejection asserts that Narendran, column 7, line 61 – column 8, line 7 discloses this element. Applicants respectfully disagree. The cited section of Narendran teaches using “dummy” replicas of documents on servers, and making such replicas active in the event of server failure. As should be readily appreciated, this is not the same as, and in fact has no relation to, parametric information comprising whether an asset is a new release. As admitted in the Final Rejection, Bestavros and Aversa fail to disclose or suggest this element. Therefore, the Examiner has not shown that Bestavros, Aversa, and Narendran, taken individually or together, disclose or suggest the subject matter of claims 8 and 28. Accordingly, Applicants

respectfully request reconsideration and withdrawal of the rejection of claims 8 and 28 under 35 U.S.C. §103(a).

Claim 20 is rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Bestavros and Aversa in view of Narendran. Applicants respectfully traverse this rejection.

Claim 20 recites “said parametric information further comprises whether each asset is a new release.” The Final Rejection asserts that Narendran, column 7, line 61 – column 8, line 7 discloses this element. Applicants respectfully disagree. As set forth above, the cited section of Narendran teaches using “dummy” replicas of documents on servers, and making such replicas active in the event of server failure. As should be readily appreciated, this is not the same as, and in fact has no relation to, parametric information comprising whether an asset is a new release. As admitted in the Final Rejection, Bestavros and Aversa fail to disclose or suggest this element. Therefore, the Examiner has not shown that Bestavros, Aversa, and Narendran, taken individually or together, disclose or suggest the subject matter of claim 20. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 20 under 35 U.S.C. §103(a).

Applicants acknowledge that the Final Rejection establishes additional grounds for rejection of claims 2-7, 9-11, 14-19, 22-27, and 29-35, all of which are dependent upon claims 1, 13 and 21, either directly or indirectly. However, in view of the amendments and traversals set forth with respect to the independent claims, Applicants believe that claims 2-7, 9-11, 14-19, 22-27, and 29-35 are in condition for allowance, rendering the rejection of those claims moot. Applicants believe that this response completely and accurately addresses all grounds of rejection. Applicants reserve the right to challenge the rejection of any of those dependent claims in any future response that may be forthcoming.

DOCKET NO.: **BU-0124
Application No.: 10/609,426
Office Action Dated: October 14, 2008

**PATENT
REPLY FILED UNDER EXPEDITED
PROCEDURE PURSUANT TO
37 CFR § 1.116**

CONCLUSION

In view of the foregoing, Applicants respectfully submit that this application, including claims 1-35, is in condition for allowance. Favorable consideration and prompt allowance are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

Date: January 14, 2009

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